FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, and 76-935

PEGGY J. CONNOR, ET AL.,
Appellants

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeals from the United States District Court for the Southern District of Mississippi

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REPLY BRIEF FOR PRIVATE APPELLANTS, PEGGY J. CONNOR, ET AL.

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INTRODUCTION

The state official defendants in their brief contend that "traditional state policy" (Brief for State Parties, p. 30) favors multi-member districts and maintaining the integrity of county boundaries in legisiative redistricting. They argue that although the District Court in its numerous decisions in this case fully recognized this state policy, the District Court abused its discretion in "brushing aside" (Br., p. 47) this traditional state policy in

forming single-member districts statewide which, in some instances, break county lines.

However, the alleged state policy which defendants purport to defend is not as strong as their assertions. Past legislative apportionments in Mississippi have subdivided counties to provide single-member and two-member districts in the House of Representatives and have crossed county lines to form multi-county districts composed of two or more counties.[1] Nevertheless, although past Mississippi legislative apportionments have generally preserved counties intact, the Mississippi Legislature has failed to enact a valid legislative reapportionment plan which meets Federal Constitutional and statutory requirements. The District Court therefore was required by the prior decisions of this Court in this and other cases to promulgate a court-ordered legislative reapportionment plan which provides single-member districts statewide.

The District Court fully recognized that past state apportionments have preserved the integrity of county boundaries, and therefore determined that "any single member legislative district has to be constructed primarily from counties, using beats [supervisors' districts] and precincts as necessary to approach or attain the required population norm" (419 F. Supp. 1072, 1074); "we have striven to preserve county identity as far as reasonably possible" (419 F. Supp. 1089, 1090). The population norm for a Senate district is 42,633 persons, and the population norm for a House district is 18,171 (*id.* at 1074). The District Court's Senate plan preserves 63 of Mississippi's 82 counties intact, and breaks up only 19 counties in the formation of single-member Senate districts (App., Vol. III, pp. 233-36, 280). However, because there are 39 counties in Mississippi with a popu-

[1] See Brief for Private Appellants, Peggy J. Connor, et al., pp. 49-50, Brief App. B.

lation of less than 18,171, and 43 counties with a population of more than 18,171 (Brief for the United States, p. 6), more counties must be broken up in the House plan. Nevertheless, the District Court's House plan does preserve 40 counties intact, and breaks up 42 (App., Vol. III, pp. 237-47, 280-82). In each instance in which a county is split up for a House district, the legislative district is defined by supervisors' districts, which form the basic unit of county government (419 F. Supp. at 1074), or by voting precincts.[2]

Despite the District Court's largely successful effort to promulgate a single-member redistricting plan which preserves the integrity of county boundaries, the defendants argue that the District Court's plan should have provided some multi-member districts in recognition of past state policy (Br., p. 31). This position is completely untenable because (1) when District Courts are forced to fashion reapportionment plans to supplant unconstitutional state legislation, single-member districts are to be preferred absent unusual circumstances, *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639 (1976); (2) Mississippi's preference for multi-member districts and at-large voting is rooted in racial discrimination, and (3) the multi-member reapportionment plans favored by the defendants in this case unconstitutionally minimize and cancel out black voting strength.

[2] Maps showing the boundaries of the District Court's Senate and House districts are attached at the back of this Brief. In addition, we have attached maps showing the boundaries of the District Court's House districts in Washington and Warren Counties, with census enumeration districts in Greenville and Vicksburg shaded for racial percentages, to illustrate our objections to those districts (Brief for Private Appellants, pp. 43-45).

I. THE DISTRICT COURT WAS REQUIRED TO ORDER SINGLE-MEMBER DISTRICTS IN ITS PERMANENT REAPPORTIONMENT PLAN BECAUSE IN COURT-ORDERED REAPPORTIONMENT PLANS SINGLE-MEMBER DISTRICTS ARE TO BE PREFERRED ABSENT UNUSUAL CIRCUMSTANCES.

When a state legislature enacts a reapportionment plan, some multi-member districts are permitted unless (1) the plan fails to provide substantial equality of population among the districts, *Reynolds* v. *Sims*, 377 U.S. 533, 579 (1964), or (2) the multi-member districts unconstitutionally minimize or cancel out minority voting strength, *White* v. *Regester*, 412 U.S. 755, 765 (1973). While "legislative reapportionment is primarily a matter for legislative consideration and determination," judicial relief is required "when a legislature fails to reapportion according to federal constitutional requisites after having had an adequate opportunity to do so." *Reynolds*, *supra*, at 586. Here, the Mississippi Legislature over a period of 15 years in six separate attempts at reapportionment has failed to enact a valid legislative reapportionment plan which meets both the *Reynolds* one-person, one-vote standards and the racial nondiscrimination requirements of the Voting Rights Act of 1965.[3] The

[3] The 1962 legislative plan, approved by the voters in 1963, was unconstitutionally malapportioned. *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966). No appeal was taken by the defendants. The 1966 plan enacted by the Legislature in special session also was unconstitutionally malapportioned, *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967), and no appeal was taken by the defendants. The 1971 plan enacted by the Legislature was unconstitutionally malapportioned, *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *vacated on other grounds sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972), and the state defendants failed to appeal. The two plans passed by the Legislature in 1973 were superseded by the Legislature's 1975 plan which was objected to by the United States Attorney General under the Voting Rights Act (Brief for Private Appellants, p. 15), and no action was filed

Mississippi Legislature having defaulted in its Federal constitutional and statutory responsibilities, legislative reapportionment then became the responsibility of the District Court.

In this case and other cases, this Court in the exercise of its supervisory power over District Courts[4] has developed different standards regarding the use of multi-member districts in court-ordered legislative reapportionment plans. Because of the "practical weaknesses inherent in such schemes," *Chapman* v. *Meier*, 420 U.S. 1, 15, and their potential for racial discrimination, *id.* at 16-18, this Court has

> "frequently reaffirmed the rule that when United States district courts are put to the task of fashioning reapportionment plans to supplant concededly invalid state legislation, single-member districts are to be preferred absent unusual circumstances. *Chapman* v. *Meier*, 420 U.S. 1, 17-19 (1975); *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972); *Connor* v. *Johnson* [402 U.S. 690] at 692." *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639 (1976).

As the decisions of the District Court here demonstrate, 419 F. Supp. 1072, 1089, no special or unusual circumstances in this case dictate the use of multi-member districts.[5] Thus, in shaping remedial relief the District Court here did not abuse its discretion in ordering a

in the U.S. District Court for the District of Columbia challenging that determination as allowed by 42 U.S.C. § 1973c.

[4] *Chapman* v. *Meier*, 420 U.S. 1, 18 (1975).

[5] In the only case in which such an unusual circumstance has been found, *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973), the District Court was held to have acted within its discretion in establishing a single multi-member district as an interim remedy to alleviate substantial underrepresentation of military personnel in an impending election. No such situation was presented here.

single-member district reapportionment plan for both houses of the Mississippi Legislature.

Defendants argue that the rule against employment of multi-member districts in court-ordered reapportionment plans is not applicable here, and—without discussing this Court's recent *East Carroll Parish* decision—argue that under *Chapman*, *Mahan*, and the *Connor* cases the rule is to be applied only

> "where *large* multi-member districts were created; where the court *imposed* multi-member districts on states that previously did not use multi-member districts; and where multi-member districts had the purpose or effect of minimizing or cancelling the voting strength of racial or political elements." Br., p. 31 (emphasis in original).

Defendants' argument completely overlooks this Court's *East Carroll Parish* decision and is based upon a misreading of the other cases upon which defendants rely.

First, contrary to defendants' contentions (Br., pp. 36-39), the rule against court-ordered multi-member districts is not confined to "large" multi-member districts, but applies to *all* multi-member districts in court-ordered plans. In *Chapman* v. *Meier*, 420 U.S. 1 (1975), this Court applied the rule to reverse a District Court decision providing for five multi-member districts electing only two (District 29), three (District 32), four (Districts 5 and 18), and five (District 21) senators. *Chapman* v. *Meier*, 372 F. Supp. 371, 375 (D.N.D. 1974) (three-judge court), *rev'd*, 420 U.S. 1 (1975). In *Mahan* v. *Howell*, 410 U.S. 315 (1973), this Court applied the rule to require that one multi-member district which combined three single-member senatorial districts into one multi-member district for the election of three senators had to be justified by unusual circumstances (*id.* at 329-33). In *East Carroll Parish*, *supra*, this Court affirmed a Court of Appeals decision striking down at-large, multi-member voting in a Louisiana parish with a population of only 12,884 persons. *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1301 (5th Cir. 1973) (*en banc*), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, *supra*.

In the 1971 and 1972 decisions in this case, *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972), this Court held that in court-ordered plans "single-member districts are preferable to large multi-member districts as a general matter" in response to the District Court's determination in 1971 that it would be "ideal" if Hinds, Harrison, and Jackson Counties, which elected one-fifth of the membership of both houses of the Mississippi Legislature, could be subdivided into single-member districts. The District Court had retained jurisdiction to explore the feasibility of single-member districting those counties. *Connor* v. *Johnson*, 330 F. Supp. 506, 519 (S.D. Miss. 1971). Thus, the precise language of the Court in the *Connor* decisions was confined to the facts and determinations of the District Court in the 1971 appeal, and in light of the Court's subsequent decisions cannot be given any broader meaning.

Second, the application of the rule is not strictly limited to cases in which single-member districts are dictated by state policy. In the 1971 appeal in this case, the Court held that in court-ordered plans "single-member districts are preferable * * * as a general matter," despite what defendants characterize as "Mississippi's long-standing policy" (Br., p. 47) favoring multi-member districts. In *East Carroll Parish* the Louisiana Legislature enacted enabling legislation providing for at-large election of police jurors and school board members[6] and at-large,

[6] The Louisiana legislation was objected to by the United States Attorney General under Section 5 of the Voting Rights Act of 1965 for racial discrimination. 424 U.S. at 637, n. 2.

multi-member voting was the expressed preference of the local officials, whose plan the District Court adopted. Yet despite the preference of the legislature and the police jury for multi-member districts, this Court nevertheless applied the blanket rule against multi-member districts in court-ordered plans "absent unusual circumstances" and held that "the District Court abused its discretion in not initially ordering a single-member reapportionment plan" (*id.* at 639-40).

True, in *Chapman* v. *Meier*, *supra*, the imposition of multi-member senate districts by the District Court contravened state policy, but the reasons announced by the Court for preferring single-member districts in court-ordered plans were not limited to the requirements of state policy in that case. District Courts "should refrain from imposing [multi-member districts] upon a State," this Court held in *Chapman*, *supra*, at 19, because "there are practical weaknesses inherent in such schemes" (*id.* at 15) which reach beyond the question of state policy:

> "First, as the number of legislative seats within the district increases, the difficulty for the voter in making intelligent choices among candidates also increases. * * * Ballots tend to become unwieldy, confusing, and too lengthy to allow thoughtful consideration. Second, when candidates are elected at large, residents of particular areas within the district may feel that they have no representative specially responsible to them. * * * Third, it is possible that bloc voting by delegates from a multimember district may result in undue representation of residents of these districts relative to voters in singlemember districts. * * * Criticism of multimember districts has been frequent and widespread." 420 U.S. at 15-16.

The fact that "a State . . . always has employed single-member districts" only provides a "special reason to follow the Connor rule . . ." *Id.* at 19.

Third, contrary to defendants' argument (Br., pp. 31, 36, 43-47), this Court has not limited the rule against multi-member districts to cases in which such districts had the purpose or effect of diluting black voting strength. No claim of racial dilution was made in *Chapman*, *supra*, 420 U.S. at 19, but the Court held that the absence of claims of racial discrimination was irrelevant:

> "The fact that no allegation of minority group discrimination is raised by appellants here does not make Connor inapplicable." *Id.* at 19.

Accordingly, the District Court's decision to promulgate a permanent court-ordered legislative reapportionment plan for both houses of the Mississippi Legislature providing only single-member districts not only does not constitute an abuse of discretion, but was required by the decisions of this Court in this and other cases.

II. MISSISSIPPI'S PRESENT PREFERENCE FOR MULTI-MEMBER DISTRICTS AND AT-LARGE VOTING IS ROOTED IN RACIAL DISCRIMINATION.

Because of the inequities and racially discriminatory features of multi-member districts,[7] the number of legislative reapportionments employing multi-member districts has substantially decreased throughout the South.[8] Multi-member legislative redistricting plans have been struck

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[7] See *Chapman* v. *Meier*, *supra*, at 15-19; *Lucas* v. *Colorado General Assembly*, 377 U.S. 713, 731, n. 21 (1964); Carpeneti, *Legislative Apportionment: Multi-member Districts and Fair Representation*, 120 U. Pa. L. Rev. 666 (1972); Banzhaf, *Multi-Member Electoral Districts--Do They Violate the "One Man, One Vote" Principle*, 75 Yale L. J. 1309 (1966).

[8] Both houses of the state legislatures of Alabama, Louisiana, Tennessee, and Texas are now elected from single-member districts statewide. In addition, the state senates of Arkansas, Georgia and Virginia have single-member districts statewide, and the state house of South Carolina has single-member districts statewide. See Appendix A, *infra*.

down by the courts for, *inter alia*, invidious dilution of minority voting strength in Texas,[9] Alabama,[10] and Louisiana,[11] and have been objected to by the Attorney General under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, for racial discrimination in Georgia,[12] South Carolina,[13] Louisiana, and Virginia.[14] In most Southern states in which multi-member districts have been struck down, the number of black legislators has increased dramatically: in Alabama the number of black legislators increased from 2 to 15, in Louisiana from 1 to 10 (from 1 to 8 in the 1972 elections), in Georgia from 14 to 22 (from 14 to 20 in the House), and in South Carolina from 4 to 13.[15]

Yet, the Mississippi state officials in their brief continue to cling to this out-moded, inequitable and discriminatory form of districting. The history of efforts of the Mississippi Legislature to thwart the election of black

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[9] *Graves* v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) (three-judge court), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973); *Graves* v. *Barnes*, 378 F. Supp. 640 (W.D. Tex. 1974) (three-judge court) *vac'd on suggestion of mootness sub nom. White* v. *Regester*, 422 U.S. 935 (1975).

[10] *Sims* v. *Amos*, 336 F. Supp. 924, 936 (M.D. Ala. 1972) (three-judge court), *aff'd mem.*, 409 U.S. 942 (1972).

[11] *Bussie* v. *Governor of Louisiana*, 333 F. Supp. 452, 454 (E.D. La. 1971), *modif'd and aff'd*, 457 F.2d 796 (5th Cir. 1972), *vac'd and remanded on other grounds sub nom. Taylor* v. *McKeithen*, 407 U.S. 191 (1972).

[12] *Georgia* v. *United States*, 411 U.S. 526 (1973).

[13] *Harper* v. *Levi*, 520 F.2d 53 (D.C. Cir. 1975); *Morris* v. *Gressette*, No. 75-1583, probable juris. noted, Dec. 6, 1976.

[14] *Hearings on the Extension of the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong. 1st Sess. 598-600 (1975).

[15] Brief for Private Appellants, p. 29, n. 35; United States Commission on Civil Rights, THE VOTING RIGHTS ACT: TEN YEARS AFTER 214, 234-35, 241 (1975).

candidates to public office,[16] we submit, indicates that Mississippi's preference for multi-member districts and at-large legislative voting is "rooted in racial discrimination," *Taylor* v. *McKeithen*, 407 U.S. 191, 194, n. 3 (1972).

Multi-member legislative districts are the functional equivalent of at-large voting at the county and municipal level.[17] Under both multi-member districts and at-large voting, two or more officials are elected from a single election district in at-large voting. Both forms allow "the majority to defeat the minority on all fronts," *Kilgarlin* v. *Hill*, 386 U.S. 120, 126 (Douglas, J., dissenting), and offer the prospect that 51 percent of the vote can elect 100 percent of the representation.[18]

Since the first lawsuits filed by the Department of Justice challenging racial discrimination in voter registration and since the enactment by Congress of the Voting Rights Act of 1965, the Mississippi Legislature has continually enacted racially discriminatory legislation providing for at-large voting of public officials. In each instance, such legislation has either been held unconstitutional by the courts because of a racially discriminatory purpose and effect, or has been objected to by the United States Attorney General under Section 5 of the Voting Rights Act for racial discrimination.

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[16] See Brief for Private Appellants, Brief App. C.

[17] *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976). In *Turner* v. *McKeithen*, 490 F.2d 191, 194, n. 8 (5th Cir. 1973), the Fifth Circuit (per Brown, C.J.) adopted Judge Clark's comment that "multi-member districts—* * * in logic of analysis are merely one form of at-large voting * * *" *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1315 (5th Cir. 1973) (dissent), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, *supra*.

[18] R. Dixon, DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS 17 (1968).

In 1962, after the first Justice Department voter registration suits were filed,[19] the Mississippi Legislature amended state municipal election law [20] to require all municipal aldermen to be elected at-large.[21] The author of the 1962 legislation in urging its enactment asserted that "this is needed to maintain our southern way of life." *Stewart* v. *Waller*, 404 F. Supp. 206, 213 (N.D. Miss. 1975) (three-judge court). A three-judge District Court, noting Mississippi's "long history of statutory racial segregation and discrimination . . . with consequent token participation by blacks in the political processes of the state," 404 F. Supp. at 214, held the 1962 act "violative of the Fourteenth and Fifteenth Amendments to the Constitution of the United States as a purposeful device conceived and operated to further racial discrimination in the voting process" (404 F. Supp. at 215) and to "thwart the election of minority candidates to the office of alderman" (*id.* at 214).

Subsequently, in 1966, the Mississippi Legislature amended Miss. Code Ann. § 2870 (1956 Recomp.) to en-

[19] See Brief for the United States, Brief Appendix A, Racially Discriminatory Voting Practices in Mississippi, pp. 31a-32a, 35a-38a; United States Commission on Civil Rights, VOTING IN MISSISSIPPI 52-57 (1965). The first Justice Department lawsuits filed in Mississippi pursuant to 42 U.S.C. § 1971(a) were: *United States* v. *Lynd*, filed July 5, 1961, S.D. Miss.; *United States* v. *Ramsey*, filed July 6, 1961, S.D. Miss.; *United States* v. *Daniel*, filed August 3, 1961, S.D. Miss.; and *United States* v. *Wood*, filed August 5, 1961, S.D. Miss. For a description of this litigation, see *Hearings on the Voting Rights Act of 1965 (S. 1564) Before the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., Part 2, pp. 1175 ff. (1965).

[20] Miss. Laws, 1962, ch. 537.

[21] Prior to 1962, state law applicable to code charter municipalities required cities with population over 10,000 to elect six aldermen by wards and one at-large, and allowed municipalities under 10,000 to choose to elect all five aldermen at-large or four by wards and one at-large. *Stewart* v. *Waller*, 404 F. Supp. 206, 209 (N.D. Miss. 1975) (three-judge court).

able county boards of supervisors to switch from election from each of the five supervisors' districts to at-large, countywide voting for all five supervisors.[22] The legislation was challenged for lack of clearance under Federal review provisions of Section 5 of the Voting Rights Act of 1965, and this Court, ruling that the election law change was within the submission requirements of Section 5, held:

> "No. 25 involves a change from district to at-large voting for county supervisors. The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See Reynolds v. Sims, 377 U.S. 533, 555 (1964). Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting." *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

The change subsequently was submitted for Section 5 review, and the Attorney General objected to the change, along with two other Mississippi election law changes, for the reason that "these amendments had as their purpose and have had as their effect the denial and the abridgment of the right to vote on account of race or color." [23]

Subsequently, in 1968 and 1971 the Mississippi Legislature reenacted the objected to amendment to Miss. Code Ann. § 2870 (1956 Recomp.); the 1968 legislation was never submitted under Section 5, and the 1971 legis-

[22] Miss. Laws, 1966, ch. 290.

[23] Section 5 objection letter from Jerris Leonard, Assistant Attorney General, Civil Rights Division, to A. F. Summer, Attorney General of Mississippi, May 21, 1969; Hearing of May 7, 1975, Ex. P-1; Hearing of Feb. 7, 1975, Exs. P-1, P-2, Request for Admissions Ex. 20.

lation also was objected to by the Attorney General for racial discrimination.[24]

Also in 1966 the Mississippi Legislature passed three statutes providing for at-large election of members of county boards of education, previously elected from supervisors' districts.[25] These also were objected to by the Attorney General under Section 5 of the Voting Rights Act.[26] In 1975 the Mississippi Legislature in its legislative reapportionment plan provided for numerous multi-member districts, and the Attorney General in detailing the reasons for his Section 5 objection referred to the discriminatory effects of these multi-member districts.[27]

This prior history of the racially discriminatory efforts of the Mississippi Legislature to provide for at-large voting of city officials—to preclude the election of black aldermen from majority black wards—and for the at-large election of county supervisors and other county officials—to preclude the election of black county officials from majority black beats—clearly compels the conclusion that Mississippi's preference for at-large election of state legislators—to preclude the election of black legislators from majority black single-member districts—taken together with an extensive past history of exclusion of blacks from the political processes, is "rooted in racial discrimination."

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[24] *Hearings, supra* note 14, at 599.

[25] Miss. Laws, 1966, ch. 404, codified in Miss. Code Ann. § 6271-03.5 (1956 Recomp.) (Supp. 1966); Miss. Laws, 1966, ch. 428; Miss. Laws, 1966, ch. 431. See United States Commission on Civil Rights, POLITICAL PARTICIPATION 22 (1968).

[26] *Hearings, supra* note 14, at 599.

[27] See Brief for Private Appellants, p. 15; Memorandum for the United States as Amicus Curiae, *Connor* v. *Waller*, No. A968, filed June 3, 1975.

III. DEFENDANTS' OBJECTIONS TO THE DISTRICT COURT'S PLAN ARE UNTIMELY AND THE MULTI-MEMBER REAPPORTIONMENT PLANS FAVORED BY THE DEFENDANTS UNCONSTITUTIONALLY MINIMIZE AND CANCEL OUT BLACK VOTING STRENGTH.

Defendants in their brief do not point to any plan presented in this record which would satisfy their objections to the District Court's plan. Rather, they simply state that the District Court could have fashioned a plan which "utilized small multi-member districts and single-member districts" (Br., p. 31), and request that the District Court's judgment be reversed and remanded "with instructions to formulate a reapportionment plan that preserves the integrity of county boundaries" (Br., p. 53)—although as we have pointed out above, the District Court's single-member redistricting plan does tend to preserve the integrity of county boundaries to the greatest extent possible.[28]

Defendants' objections to the District Court's single-member reapportionment plan are untenable and cannot be sustained, first, because their objections are untimely, and second, because the plans they prefer—on this record—are racially discriminatory and unconstitutionally dilute black voting strength measured by any standard.

At this late stage in the litigation, defendants should be precluded from raising objections to the District Court's plan because (1) at each stage of the litigation in which defendants were given an opportunity to present a new plan which met their requirements, they declined to do so, and (2) defendants failed to object to the Dis-

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[28] Of the plans in the record, only plaintiffs' Modified Henderson Senate County Boundary Plan (App. Vol. III, pp. 186-90) would have provided single-member districts and split up fewer counties (15, as opposed to 19 in the District Court's plan).

trict Court's final judgment and failed, after the judgment was announced, to present any alternative plans which would have met their specifications.

The District Court in its Order of July 11, 1975 announcing the temporary plan for the 1975 legislative elections only (App., Vol. III, p. 207) specifically directed the parties to file with the Court their proposals for the permanent reapportionment of the Mississippi Legislature. The District Court specifically directed:

> "It is further ordered, adjudged and decreed that within ninety days of this date, the parties hereto shall file with the Clerk of this Court plans for the permanent reapportionment of the Legislature.
>
> The first plan shall be for minimum practicable deviations from population norms without fracturing county boundaries. An alternative plan shall provide for minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. Any proposed fracture shall state if it is required to avoid dilution of black voting strength.
>
> The alternate plan shall adhere as nearly as possible to precinct and beat lines. Thirdly, the parties may submit plans of their own composition consistently with their view of the law. * * * All plans shall be accompanied by appropriate population data, calculations as to deviations from the norm, racial composition, etc." App., Vol. II, p. 237.[29]

[29] On August 1, 1975, the District Court ordered that all proposed permanent plans be based on 1973 Census estimates of population (App., Vol. II, p. 256). On August 24, 1976, after plaintiffs' and plaintiff-intervenor's plans were submitted, the District Court discarded these population statistics as unfeasible: "We cannot use the 1973 official population estimates because they do not include beats and precincts" (419 F. Supp. at 1077).

In response to this directive, both the plaintiffs[30] and the plaintiff-intervenor[31] filed proposals for the permanent apportionment of the legislature in accordance with the guidelines set out by the District Court. The defendants, in their response to this Order, filed no new plans. Instead, they simply reiterated their contentions that none of the prior legislative plans had been declared unconstitutional and stated:

> "In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a 'permanent' court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this Court's order of July 11, 1975, which fractures only a minimum of county lines." Defendants' Submission Pursuant to Order, filed October 9, 1975, p. 6 (App., Vol. I, p. 27).

Defendants' Submission of October 9, 1975 makes clear that when they insist that only "large" multi-member districts should be subdivided, they mean only the multi-member districts in Hinds, Harrison, and Jackson Counties; and when they insist that the District Court should have implemented a plan which provided "small multi-member districts" which "preserve the integrity of county boundaries," they mean that the District Court should have ordered the 1975 legislatively-enacted plan—to which the Attorney General objected for racial discrimination—

[30] Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, filed Oct. 15, 1975 (App., Vol. I, p. 28).

[31] Alternative Plans Submitted by the United States, filed Oct. 31, 1975 (App., Vol. III, pp. 1-77).

trict Court's final judgment and failed, after the judgment was announced, to present any alternative plans which would have met their specifications.

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> "It is further ordered, adjudged and decreed that within ninety days of this date, the parties hereto shall file with the Clerk of this Court plans for the permanent reapportionment of the Legislature.
>
> The first plan shall be for minimum practicable deviations from population norms without fracturing county boundaries. An alternative plan shall provide for minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. Any proposed fracture shall state if it is required to avoid dilution of black voting strength.
>
> The alternate plan shall adhere as nearly as possible to precinct and beat lines. Thirdly, the parties may submit plans of their own composition consistently with their view of the law. * * * All plans shall be accompanied by appropriate population data, calculations as to deviations from the norm, racial composition, etc." App., Vol. II, p. 237.[29]

[29] On August 1, 1975, the District Court ordered that all proposed permanent plans be based on 1978 Census estimates of population (App., Vol. II, p. 256). On August 24, 1976, after plaintiffs' and plaintiff-intervenor's plans were submitted, the District Court discarded these population statistics as unfeasible: "We cannot use the 1973 official population estimates because they do not include beats and precincts" (419 F. Supp. at 1077).

In response to this directive, both the plaintiffs[30] and the plaintiff-intervenor[31] filed proposals for the permanent apportionment of the legislature in accordance with the guidelines set out by the District Court. The defendants, in their response to this Order, filed no new plans. Instead, they simply reiterated their contentions that none of the prior legislative plans had been declared unconstitutional and stated:

> "In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a 'permanent' court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this Court's order of July 11, 1975, which fractures only a minimum of county lines." Defendants' Submission Pursuant to Order, filed October 9, 1975, p. 6 (App., Vol. I, p. 27).

Defendants' Submission of October 9, 1975 makes clear that when they insist that only "large" multi-member districts should be subdivided, they mean only the multi-member districts in Hinds, Harrison, and Jackson Counties; and when they insist that the District Court should have implemented a plan which provided "small multi-member districts" which "preserve the integrity of county boundaries," they mean that the District Court should have ordered the 1975 legislatively-enacted plan—to which the Attorney General objected for racial discrimination—

[30] Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, filed Oct. 15, 1975 (App., Vol. I, p. 28).

[31] Alternative Plans Submitted by the United States, filed Oct. 31, 1975 (App., Vol. III, pp. 1-77).

or the 1975 temporary court-ordered plan—which violated this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975)—into effect as a permanent court-ordered plan.

As previously indicated, Section I *supra*, neither of these plans satisfy the requirements of this Court for court-ordered legislative reapportionment plans. Further, although it is not necessary to reach the question of whether these plans would have satisfied constitutional requirements for legislatively-enacted plans, both of these plans would have violated the constitutional standards for legislatively-enacted plans both for malapportionment [32] and for invidious dilution of black voting strength.

The District Court did not abuse its discretion in refusing to order permanent apportionment plans under which a majority of both houses of the Mississippi Legislature were elected from multi-member districts [33] and which employed multi-member districts which unconstitutionally minimized and cancelled out black voting strength. In the House plans, seven black majority counties were combined with more populous white majority counties to

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[32] See Brief for Private Appellants, pp. 13-14.

[33] *Id.*, pp. 9 n. 11, 12, 16-17. The renumbering of the floterial districts in the 1975 court-ordered plan gives the illusion of more single-member districts in the 1975 court plan (Defendants' Br., p. 29) than in the 1971 court plan (Defendants' Br., p. 21), when in fact only one multi-member Senate district (District 22, Hinds County) and only six multi-member House districts (District 3, Desoto and Marshall; District 28, Madison and Rankin; District 31, Hinds; District 43, Pearl River and Stone; District 45, Harrison; and District 46, Jackson and George) were subdivided into single-member districts for the 1975 plan (App., Vol. II, pp. 180-82, 195-96, 218-19). For example, in the 1975 plan, floterial District 1 (Alcorn, Benton, and Tippah, three representatives, Alcorn electing one, Benton and Tippah electing one, and one at-large) (330 F. Supp. at 512, 516) was renumbered: District 1, Alcorn, one representative; District 1A, Benton and Tippah, one representative; District 1B, Alcorn, Benton, and Tippah (Floater District), one representative (App., Vol. II, p. 230).

create district-wide white majorities.[34] In addition, substantial concentrations of black voting strength were submerged in countywide voting in white majority counties.[35] The uncontradicted testimony before the District Court indicated that, as to the 1975 plan enacted by the Legislature, because disproportionately fewer blacks were of voting age, were registered to vote, or were able to participate freely in the political process, black voters were able to elect candidates of their choice in only one House district.[36]

Similarly, in the Senate plans, eight black majority counties were combined with more populous white majority counties to create district-wide white majorities.[37] Substantial concentrations of black voting strength were similarly submerged in countywide voting.[38] Black voters were precluded from electing candidates of their choice in any of the Senate districts in the 1975 legislatively-enacted plan.[39]

While legislatively-enacted multi-member districts are not *per se* unconstitutional, *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), legislatively-enacted multi-member districts are unconstitutional when black voters have "had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice," *White* v. *Regester*, 412 U.S. 755,

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[34] See J.S., *Connor* v. *Waller*, 421 U.S. 656 (1975) (No. 74-1509), pp. 8-14, Brief App. D; App., Vol. II, pp. 239-51.

[35] *Id.*

[36] App., Vol. II, pp. 81-113; Hearing of May 7, 1975, Exs. P-30, P-31.

[37] J.S., *Connor* v. *Waller*, *supra*, pp. 8-14, Brief App. D; App., Vol. II, pp. 239-51.

[38] *Id.*

[39] App., Vol. II, pp. 81-113; Hearing of May 7, 1975, Exs. P-30, P-31.

766 (1973).[40] Plaintiffs have met their burden in this case of showing that through multi-member districts Mississippi black people have been denied equal access to the political process. In a state which is 36.8 percent black, only four blacks in this century have been elected to the 174-member Mississippi Legislature. Blacks have been excluded from equal participation in the electoral processes by Mississippi's racially discriminatory voter registration and poll tax requirements, and by oppressed social and economic conditions. Candidates favored by the black voters have been precluded from being elected in districts in which blacks do not constitute a voting majority by racial bloc voting by whites; by the majority vote requirement for party nomination, Miss. Code Ann. § 23-3-69 (1972); by the prohibition on single-shot voting, Miss. Code Ann. § 3110 (1956 Recomp.); and by the "post" or "place" requirement limiting candidates to a specified post on the ballot. Further, the almost all-white Mississippi Legislature has proven itself unresponsive to the needs and interests of the black community, and has even enacted racially discriminatory legislation designed to thwart the election of black candidates to public office.[41]

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[40] In *White* v. *Regester, supra,* this Court sustained plaintiffs' claim of dilution of minority voting strength on the basis of proof showing: (1) a past history of official racial discrimination in the state, affecting the right of blacks and Mexican-Americans to register and vote and participate in the democratic processes; (2) a majority vote requirement to win party nomination in party primaries; (3) a post or place requirement limiting legislative candidates to a particular post on the ballot; (4) a disproportionately low number of minority group members elected to legislative office; (5) discrimination in slating legislative candidates; (6) unresponsiveness of elected legislators to the interests of the minority groups and (7) relative socio-economic disadvantage of minority group members (412 U.S. at 766-69).

[41] Brief for Private Appellants, pp. 28-36, Brief App. C; Brief for the United States, Brief App. A. The testimony quoted at pp. 45-46 of defendants' brief refers to black people now being able to register and vote in Mississippi, not to the absence of any discrimination in the legislative election process, see App., Vol. II, pp. 108-10, 117-19, 125-26, Ex. P-34.

Defendants contend that since 1971, none of the court-ordered or legislatively-enacted reapportionment plans (which they prefer as permanent plans) have been declared unconstitutional (Br., p. 20), and in fact rely upon the District Court's 1975 decision sustaining the constitutionality of the Legislature's 1975 plan against plaintiffs' claims of racial discrimination (Br., p. 34). These contentions are entirely misplaced.

In 1971 the District Court ignored the racial dilution issues in its 1971 court-ordered plan.[42] Although the racial dilution issue was presented in the 1971 appeal,[43] this Court declined to decide the constitutionality of the District Court's 1971 plan pending proceedings to subdivide the multi-member districts in Hinds, Harrison, and Jackson Counties, *Connor* v. *Williams,* 404 U.S. 549 (1972). In 1975 the District Court's decision sustaining the constitutionality of the Legislature's 1975 plan was reversed by this Court, *Connor* v. *Waller,* 396 F. Supp. 1308, *rev'd,* 421 U.S. 656; and in ruling that the plan was subject to Section 5 submission requirements, the Court held that the District Court "erred in deciding the constitutional challenges to the Act based upon claims of racial discrimination," 421 U.S. at 656. Upon submission, the United States Attorney General objected to the Legislature's 1975 plan for racial discrimination, and that determination was never challenged in the United States District Court for the District of Columbia, 42 U.S.C. § 1973c.

Thus, prior to 1975, the districts first devised in the 1971 court-ordered plan were never held uncon-

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[42] The District Court indicated that it formulated the 1971 plan "in the hope of attaining, *as nearly as possible,* equality in population among the several districts, without regard to race * * *" (330 F. Supp. at 508).

[43] J.S., *Connor* v. *Williams,* 404 U.S. 549 (1972), pp. 7-13.

stitutional for racial dilution because the question was never reached. When the question was decided by the District Court in 1975, this Court reversed holding that it was improper for the District Court to have decided that issue in the absence of Section 5 submission.

On the basis of the proof presented in this case, whether judged by the standards applicable to court-ordered redistricting or legislatively-enacted redistricting, the plans preferred by the defendants are unconstitutional and invidiously minimize and cancel out black voting strength.

IV. BECAUSE THE DISTRICT COURT'S TEMPORARY 1975 REAPPORTIONMENT PLAN WAS AN INVALID PLAN, SPECIAL ELECTIONS ARE REQUIRED.

The defendants argue (Brief for State Parties, pp. 47-52) that the District Court erred in ordering any special elections, and that no special elections are required, because (1) the District Court did not find that its temporary 1975 plan unconstitutionally diluted black voting strength, and (2) in any event, since the private plaintiffs and the United States have not even attempted to demonstrate that the District Court in formulating its temporary 1975 plan was motivated by racial discrimination, plaintiffs have not met the burden of *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, No. 75-616, decided January 11, 1977, *Washington* v. *Davis*, 426 U.S. 229 (1976), and *Wright* v. *Rockefeller*, 376 U.S. 52 (1964). These cases, defendants contend, require a showing of a discriminatory purpose on the part of the District Court before a constitutional violation in the temporary 1975 plan can be found (Br., pp. 51-52).

Defendants' first contention is erroneous for two reasons. First, the District Court in its Order of July 11, 1975 noted that there were racial dilution problems in its 1975 plan in instances in which black majority counties were joined with white majority counties to create districtwide white majorities, but concluded that time and available data did not permit single-member districting in those areas prior to the 1975 primary and general elections for legislative office.[44] Second, we have shown

[44] House District 14 (Bolivar County):

> "The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan" (App., Vol. II, p. 216).

House District 15 (Issaquena and Washington Counties):

> "In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts" (*id.*, p. 221).

House District 17 (Carroll and Leflore Counties):

> "The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status" (*id.*, p. 216).

House District 24 (Kemper and Lauderdale Counties):

> "Kemper County is 54.85% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced. The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975 * * * * No presently viable plan was suggested. * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave as it is, with top priority when we come to consider the permanent plan" (*id.*, p. 222).

House Districts 23 (Lowndes County); 23A (Oktibbeha and Noxubee Counties); 23B (Lowndes, Noxubee and Oktibbeha Counties, Floater district):

> "These [Noxubee and Kemper Counties] are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both counties join Alabama. * * * Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election

that the 1975 court-ordered plan was almost identical to the Mississippi Legislature's 1975 plan which was objected to by the Attorney General under the Voting Rights Act for racial discrimination,[45] and the overwhelming weight of the evidence in this case shows that the 1975 plan did in fact dilute black voting strength.[46]

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of two Representatives. As to the election of a Representative this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white" (*id.*, pp. 221-22).

House District 30 (Claiborne and Warren):

"[Claiborne County has a] [b]lack population majority 4,986. * * * Claiborne is combined with Warren County, which has 41% black population. * * * Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats" (*id.*, p. 216).

[45] Brief for Private Appellants, pp. 15-16. The temporary 1975 court-ordered plan was identical to the 1975 Legislature's plan except that the District Court subdivided one multi-member Senate district and six multi-member House districts (one single-member House district also was slightly altered). See *supra*, note 33 .

[46] *Id.*, pp. 61-67. At the hearing held on June 20, 1975, plaintiffs elected to stand on the record made that the Legislature's 1975 plan was unconstitutional for both malapportionment and unconstitutional dilution of black voting strength (Supp. App., pp. 87a-88a). In addition to the extensive documentary evidence, the conclusion that the District Court's 1975 plan unconstitutionally diluted black voting strength is supported by the deposition testimony of Harold E. Sweeney, Jr. (App., Vol. I, pp. 71-116), Dr. James E. Loewen (App., Vol. I, pp. 117-154), Dr. Gordon G. Henderson (App., Vol. I, pp. 155-99), Asst. Attorney General J. Stanley Pottinger (App., Vol. I, pp. 200-220), Rims Barber (App., Vol. I, pp. 221-280), and Henry J. Kirksey (App., Vol. I, pp. 360-409), and by the trial testimony of Dr. Henderson (App., Vol. II, pp. 1-80), Mr. Barber (App., Vol. II, pp. 81-113), and Mr. Kirksey (App., Vol. II, pp. 114-27). Defendants presented no witnesses to contradict the testimony of these witnesses. See also, Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975 (App., Vol. II, pp. 239-51).

The defendants' contention that plaintiffs had the burden of proving discriminatory intent on the part of the District Court is likewise incorrect. This Court has never held the discriminatory purpose requirement applied by the Court in *Arlington Heights*, *Washington*, and *Wright* germane to a court-ordered reapportionment plan.[47] *Arlington Heights* and *Washington* involved challenges to allegedly discriminatory action by municipal officials, and *Wright* v. *Rockefeller* cited by defendants (Br., p. 52) involved a challenge to a Congressional redistricting statute enacted by a state legislature.

Moreover, the District Court itself recognized that its temporary 1975 plan was invalid under this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975), by superseding it with the present permanent court-ordered plan providing single-member districts statewide.[48] It is precisely because the temporary 1975 plan is invalid as a permanent court-ordered reapportionment plan that special elections are required. Thus, the new plan is not merely an improvement upon prior plans (Defendants' Br., p. 48), but is the first plan promulgated by the District Court in this 12-year-old case which meets constitutional requirements for a court-ordered legislative reapportionment plan.

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[47] Indeed, in *Chapman* v. *Meier*, 420 U.S. 1 (1975), this Court held that "unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimis variation" (*id.* at 26-27), regardless of the purpose or intent of the District Court.

[48] In promulgating its single-member plan, the District Court noted: "Yet, we have repeatedly been told that in the formulation of a court ordered legislative reapportionment plan single member districts must be used unless multiple member districts can be justified by unusual circumstances, *Chapman* v. *Meier, supra.*" 419 F. Supp. at 1075.

Members of both houses of the Mississippi Legislature were elected in 1975 to serve four-year terms. Thus, unless special elections are ordered, the members of the present Legislature elected under an invalid temporary plan will serve until their terms expire in January 1980. In numerous cases, none of which require a showing of discriminatory purpose on the part of the District Court, this Court and the lower Federal courts have been intolerant of any unnecessary delays in the effectuation of valid legislative reapportionment plans and of the perpetuation in office of legislators elected pursuant to an invalid plan.

In *Swann* v. *Adams*, 383 U.S. 210 (1966), the District Court held the Florida Legislature's 1965 reapportionment plan invalid for malapportionment, but approved the plan (with minor changes) on an interim basis and deferred any further action until after the adjournment of the 1967 legislative session. Legislative elections were scheduled for 1966. This Court held that the District Court erred in approving an invalid plan on an interim basis, and ordered speedy relief:

> "This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature itself to determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.
>
> We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections." 383 U.S. at 211-12.

On remand, the legislature enacted a new plan in March 1966 which was approved by the District Court, 258 F. Supp. 819 (S.D. Fla. 1966) (three-judge court), and pursuant to which the 1966 legislative elections were

held. On appeal, this Court held the 1966 plan invalid for malapportionment and reversed the District Court's decision, 385 U.S. 440 (1967). On remand, the District Court replaced the invalid legislative plan with a court-ordered plan of its own and, to cure the defects of the invalid plan, ordered special statewide primary and general legislative elections for a one-year term of office to be held prior to the next regular session of the legislature scheduled to commence April 4, 1967. 263 F. Supp. 225 (S.D. Fla. 1967) (three-judge court).

In *Buckley* v. *Hoff*, 234 F. Supp. 191 (D. Vt. 1964) (three-judge court), *modified and aff'd sub nom. Parsons* v. *Buckley*, 379 U.S. 359 (1965), the District Court allowed the 1964 legislative primary and general elections to proceed under an invalid, malapportioned plan, but limited the 1965 legislative session to reapportionment, and the terms of office of legislators elected under the invalid plan to March 31, 1965. On appeal, this Court approved a stipulation agreed to by the parties which affirmed the District Court's judgment but modified paragraph 3 to, *inter alia*, remove the reapportionment restriction on the 1965 legislative session, allow for consideration of reapportionment by a constitutional convention, provide for a special election of a new state legislature under a valid plan by January, 1966, and extend the terms of office of legislators elected under the invalid plan only to July 1, 1965.

In *Smith* v. *Paris*, 257 F. Supp. 901 (M.D. Ala. 1966), *modified and aff'd*, 386 F.2d 979 (5th Cir. 1967), the District Court held unconstitutional a change from district to at-large, countywide voting for members of a county Democratic executive committee, but because the suit was not filed until the eve of the election, refused to void the election held under the invalid plan. On appeal, the Fifth Circuit affirmed the District Court's judgment, but shortened the terms of office of committee

members elected under the at-large plan to two years, holding, "There is no reason to delay beyond 1968 the relief to which the district court held the plaintiffs (appellants) entitled" (386 F.2d at 980).

Other decisions militate against delay once elections have already been held under an invalid plan. In *Schaefer* v. *Thomson*, 251 F. Supp. 450 (D. Wyo. 1965) (three-judge court), *aff'd mem. sub nom. Harrison* v. *Schaefer*, 383 U.S. 269 (1966), state senators were elected under an invalid reapportionment plan, and the District Court was compelled to order its own plan. Because 12 of the 25 senators had been elected to hold office until January 1969, the District Court shortened the senators' terms of office and ordered interim elections, holding:

> "Unequal representation in eight out of the seventeen new districts would continue until January 1969. This is an unnecessary delay, especially in view of the fact that we are sitting now to effect justice and to remedy the invidious discrimination in the Wyoming Senate. The inhabitants of the State of Wyoming have a federally guaranteed right to a constitutionally apportioned legislature in January 1967. We would be remiss in our duties were we to require them to wait until 1969 to enjoy equal representation in the Senate." 251 F. Supp. at 454.

In *Reynolds* v. *State Election Board*, 233 F. Supp. 323 (W.D. Okla. 1964) (three-judge court), the District Court set aside the legislative primary elections held under an invalid reapportionment plan, and ordered special primary elections, holding: "There is ample time and sufficient funds for the special elections. In these circumstances, we decline to withhold the immediately available remedy to which the plaintiffs are clearly entitled" (233 F. Supp. at 330). In *Skolnick* v. *Illinois State Electoral Board*, 307 F. Supp. 691 (N.D. Ill. 1969) (three-judge court), the District Court permitted the 1970 elections to

be held under an invalid temporary plan because the elections were too close to permit adequate corrective action, but abbreviated the terms of office of legislators elected under the invalid plan to two years, holding that "any term of office authorized under a plan which does not meet present constitutional standards should be as limited as possible. . ." (307 F. Supp. at 697).

Not to require any special elections at all, as defendants argue, would negate the effective action taken in these cases, sanction the election of an improperly constituted legislature elected under an invalid plan to a full term of office, and contradict the prior decisions of this Court repeatedly giving approval to special elections and abbreviated terms of office for legislators elected under invalid reapportionment plans. *Schaefer* v. *Thomson*, 251 F. Supp. 450 (D. Wyo. 1965) (three-judge court), *aff'd mem. sub nom. Harrison* v. *Schaefer*, 383 U.S. 269 (1966); *Parsons* v. *Buckley*, 379 U.S. 359 (1965); *Hughes* v. *WMCA, Inc.*, 379 U.S. 694 (1965); *Mann* v. *Davis*, 238 F. Supp. 458 (E.D. Va. 1964), *aff'd mem.*, 379 U.S. 694 (1965); *Moss* v. *Burkhart*, 220 F. Supp. 149 (W.D. Okla. 1963), *aff'd per curiam sub nom. Williams* v. *Moss*, 378 U.S. 558 (1964).

Because the District Court's 1975 plan was based on the Legislature's plan to which the Attorney General objected for racial discrimination, and because the numerous multi-member districts minimized and cancelled out black voting strength, plaintiffs urge the Court to direct special elections in the majority black Senate and House districts in the new single-member court-ordered plan (except for the six preexisting House districts with black voting majorities). This can be accomplished with a minimum of expense and disruption of the orderly processes of state government. As the District Court's plan now stands, we request special elections in only 22 (including the two already

ordered by the District Court) of the 122 single-member House districts,[49] and in only 14 of the 52 single-member Senate districts.[50] If plaintiffs' Modified Henderson Senate Plan (and Hinds County Census Tract Plan) is adopted, special elections would be required in only 15 of the 52 Senate districts.[51] If plaintiffs' proposed alternatives to the District Court's discriminatory House districts are adopted, only one additional special House election would be required.[52] These special elections should be held this year or, in any event, prior to the convening of the next regular session of the Mississippi Legislature in January 1978. This is the minimum special election relief necessary to remedy the deprivation of plaintiffs' rights through 10 years of dis-

[49] The single-member majority black House districts in the District Court's plan as presently constituted in which we request special elections are listed in plaintiffs' Application to Vacate Stay Entered by the District Court Pending Appeal, *Connor* v. *Finch*, No. 76-777 (No. A-421), pp. 15-30.

[50] The single-member majority black Senate districts in the District Court's plan as presently constituted in which we request special elections are listed in Plaintiffs' Motion to Alter and Amend Judgment, filed Sept. 20, 1976, App., Vol. III, p. 164.

[51] Brief for Private Appellants, p. 42. The racial composition of those districts is set out in App., Vol. III, pp. 186-90.

[52] App., Vol. III, pp. 193-94, 196. Three Washington County districts in the District Court's plan (Districts 32, 33, and 34) are majority black in population, but do not have black voting majorities. Under plaintiffs' proposed alternatives, the three districts would have black voting majorities. Similarly, the Adams County district in the District Court's plan (District 89) does not have a black voting majority, and under plaintiff-intervenor's proposed alternative would have a black voting majority. The one new majority black House district proposed in plaintiffs' alternatives is proposed District 54 in Warren County (App., Vol. III, p. 196), which is majority white under the District Court's plan (*id.*, p. 281).

criminatory multi-member districting under court-ordered plans.

Respectfully submitted,

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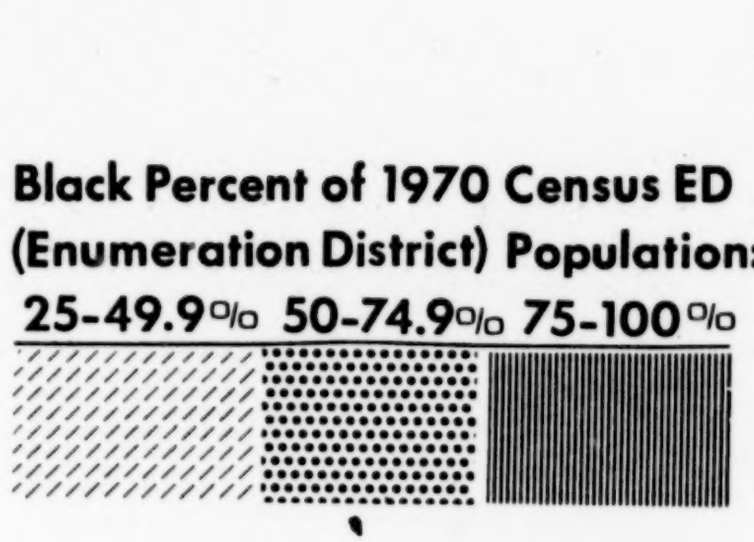
February 21, 1977

APPENDIX A

The Status of Multi-Member Districting in Ten Southern States.

State	State Senate		State House	
	Number of Districts	Number of Multi-Member Districts	Number of Districts	Number of Multi-Member Districts
Alabama	35	0	105	0
Arkansas	35	0	84	10
Florida	40	14	120	24
Georgia	56	0	105	16
Louisiana	39	0	105	0
North Carolina	27	18	45	35
South Carolina	16	13	124	0
Tennessee	33	0	99	0
Texas	31	0	150	0
Virginia	40	0	52	28

Sources: Council of State Governments, *Reapportionment in the Seventies* (1973); State codes of Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, and Texas.



55-Yazoo County (part)

LEGEND

GENERAL HIGHWAY MAP
WARREN COUNTY
MISSISSIPPI

PREPARED BY
MISSISSIPPI STATE HIGHWAY DEPARTMENT
TRAFFIC AND PLANNING DIVISION
IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATA OBTAINED FROM
TRAFFIC AND PLANNING SURVEY
AND
AERIAL PHOTOGRAPHS
1966

SCALE IN MILES

TRANSVERSE MERCATOR PROJECTION
1967

BEAT LINES AS OF AUGUST, 1970

POLITICAL BOUNDARIES ARE SHOWN ACCORDING TO BEST AVAILABLE INFORMATION AND ARE SUBJECT TO CHANGE EXCEPT WHERE ESTABLISHED BY COURT DECISION.

GENERAL HIGHWAY MAP
WASHINGTON COUNTY
MISSISSIPPI

PREPARED BY
MISSISSIPPI STATE HIGHWAY DEPARTMENT
TRANSPORTATION PLANNING DIVISION

IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

1973

Inset A
T19N R8W

Inset B
T18N R7W

Inset C
T19N R8W

Inset D
T19N R8W

Inset E
T18N R7W

Inset F
T18N R7W

Inset G
T17N R8W

Inset H
T17N R8W

Inset J
T14N R8W

SCALE OF ENLARGEMENT IN MILES

SCALE IN MILES

TRANSVERSE MERCATOR PROJECTION

LEGEND

COUNTY SEAT
OTHER CITIES AND VILLAGES
OBSERVATION OR LOOKOUT TOWER
TRIANGULATION STATION
BENCH MARK WITH ELEVATION
CHURCH
CHURCH WITH CEMETERY ADJACENT
SCHOOLHOUSE
POST OFFICE
HOTEL OR INN
FACTORY OR INDUSTRIAL PLANT
GRAIN ELEVATOR
WAREHOUSE
RADIO STATION
RADIO TOWER
WEIGHT STATION
AIRPORT
HISTORIC OR SCENIC SITE
HIGHWAY GARAGE
POWER PLANT
POWER SUBSTATION
BOOSTER STATION OR MICRO WAVE TOWER
GOLF COURSE OR COUNTRY CLUB
SEWAGE DISPOSAL PLANT
REFUSE, GARBAGE OR TRASH DUMP
SCRAP METAL
SCRAP BUILDING MATERIAL
SANITARY FILL
OTHER SCRAP
SPOT TO INDICATE LOCATION OF ANY CULTURAL FEATURE OUT OF POSITION

POLITICAL BOUNDARIES ARE SHOWN ACCORDING TO BEST AVAILABLE INFORMATION AND ARE SUBJECT TO CHANGE EXCEPT WHERE ESTABLISHED BY COURT DECISION.

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32-Issaquena County (part) HJK

SENATE PLAN

TENNESSEE

ARKANSAS

LOUISIANA

ALABAMA

DESOTO 1
MARSHALL 2
BENTON 3
TIPPAH 4
ALCORN 5
TISHOMINGO
TUNICA 12
TATE 12
PRENTISS 5
UNION 3
PANOLA 2
LAFAYETTE
LEE 6
ITAWAMBA
COAHOMA 13
QUITMAN 12
PONTOTOC 3
11
19
YALOBUSHA
CALHOUN 10
CHICKASAW
7
MONROE
TALLAHATCHIE
BOLIVAR 14
15
18
19
GRENADA
9
CLAY
SUNFLOWER
20
LEFLORE 18
WEBSTER 10
16
MONTGOMERY
22
LOWNDES 8
CARROLL
OKTIBBEHA
WASHINGTON 17
CHOCTAW
21
22
29
HUMPHREYS 17
HOLMES
28
ATTALA 20
WINSTON
NOXUBEE
SHARKEY
YAZOO
28
LEAKE
NESHOBA
KEMPER
23
ISSAQUENA 29
MADISON
SCOTT
26
NEWTON
LAUDERDALE
24
30
31
32
34
WARREN
HINDS
RANKIN 27
33
35
25
SMITH
JASPER
CLARKE
36
SIMPSON
COVINGTON 42
43
JONES
WAYNE
46
CLAIBORNE 37
JEFFERSON 38
ADAMS 39
FRANKLIN
LINCOLN
LAWRENCE
JEFFERSON DAVIS
41
44
45

COUNTY OUTLINE MAP
OF

MISSISSIPPI

1976 COURT ORDERED REAPPORTIONMENT OF THE STATE LEGISLATURE

LEGISLATIVE AND BEAT BOUNDS BY H KIRKSEY

SCALE IN MILES
0 3 6 12 18
TRANSVERSE MERCATOR PROJECTION

HOUSE PLAN

TENNESSEE

ARKANSAS

LOUISIANA

ALABAMA

TENNESSEE RIVER

MISSISSIPPI RIVER

DESOTO 1 2

MARSHALL 3

BENTON 4

TIPPAH 5

ALCORN 6

TISHOMINGO 7

TUNICA 8

TATE 9

PRENTISS 14

UNION 13

PANOLA 10 11

LAFAYETTE 12

COAHOMA 15 16

QUITMAN 17

PONTOTOC 18

ITAWAMBA 21

YALOBUSHA 11

TALLAHATCHIE 27

CALHOUN 28

CHICKASAW 29

MONROE 30 31

BOLIVAR 24 26

GRENADA 39 40

SUNFLOWER 22

LEFLORE 36

WEBSTER 41

CLAY 42

CARROLL 38

MONTGOMERY 40

OKTIBBEHA 43 44

OWNDES 44 45 46

WASHINGTON 32 33 34

CHOCTAW 38

HUMPHREYS 48

HOLMES 49

ATTALA 50

WINSTON 51

NOXUBEE 52

SHARKEY 47

YAZOO 56

ISSAQUENA 32

MADISON 73

LEAKE 58

NESHOBA 59

KEMPER 60

GREEN 54

HINDS 71

RANKIN 74

SCOTT 76

NEWTON 77

CLAIBORNE 81

COPIAH 82

SIMPSON 84

SMITH 85

JASPER 86

CLARKE 87

JEFFERSON 89

ADAMS 88

FRANKLIN 90

LINCOLN 91

LAWRENCE 83

JEFFERSON DAVIS 92

COVINGTON 102

JONES 95

WAYNE 96

COUNTY OUTLINE MAP
OF

MISSISSIPPI

1976 COURT ORDERED REAPPORTIONMENT OF THE STATE LEGISLATURE

LEGISLATIVE AND BEAT BOUNDS BY H.KIRKSEY

SCALE IN MILES 0 6 12 18

TRANSVERSE MERCATOR PROJECTION

Legend:

Isolated Precinct *

Noncontiguous District ★

Indefinite Boundary

ARKANSAS
LOUISIANA
ALABAMA
TENNESSEE
MISSISSIPPI RIVER
MISSISSIPPI SOUND